



U.S. Department of Justice

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June 13, 2023

BY ECF

The Honorable Jesse M. Furman
United States District Judge
Southern District of New York
500 Pearl Street
New York, New York 10007

Re: *United States v. Mustapha Raji*, 19 Cr. 870 (JMF)

Dear Judge Furman:

The Government respectfully submits this letter to inform the Court about an error that came to the Government's attention at the end of last week. Specifically, the Government recently identified an error in the jury instructions that the parties in the above-referenced case jointly requested (Dkt. 96 at 36-38) and that the Court delivered. Although for the reasons discussed below, this error does not affect the validity of the defendant's conviction, the Government wishes to alert the Court out of an abundance of caution.

In instructing the jury about the nature of the objects of the money-laundering conspiracy charged in Count Two, the Court instructed: "The term 'specified unlawful activity' includes wire fraud and conspiracy to commit wire fraud. However, it is for you to determine whether the funds at issue were in fact the proceeds of the wire fraud scheme charged [in] Counts One and Two." (Tr. 746). That instruction was incorrect—specified unlawful activity includes "any act which is indictable under," a list of statutes including 18 U.S.C. § 1343 (substantive wire fraud, the charge in Count Two of the Indictment), but not including 18 U.S.C. § 1349 (wire fraud conspiracy, the charge in Count One of the Indictment). *See* 18 U.S.C. §§ 1956(c)(7)(A) & 1961(1)(B).

The Court need not take any action, however, for two reasons. *First*, the invited error doctrine bars any defense challenge to the instruction because the same error was included in the parties' jointly proposed jury instructions. Specifically, the parties jointly proposed that the jury be instructed that "specified unlawful activity" included "the wire fraud scheme charged in Counts One and Two" (Dkt. 96 at 36 (emphasis added)) and that "it is for [the jury] to determine whether the funds here were in fact the proceeds of the unlawful activity, the wire fraud scheme, charged in Counts One and Two" (*Id.* at 38 (emphasis added)). Having invited the error by including it in jointly proposed jury instructions, the defendant has waived any challenge to it. *See, e.g., United States v. Giovanelli*, 464 F.3d 346, 351 (2d Cir. 2006) (per curiam) ("If a party invited the charge...she has waived any right to appellate review of the charge." (cleaned up)); *United States v. Ozcelik*, 527 F.3d 88, 97 n.6 (3d Cir. 2008) ("Because [defendant] made a joint request in favor of the very instructions he now challenges, he waived his right to raise these instructional issues on appeal under the invited error doctrine.").

Cc: Jeremy Schneider, Esq. (by ECF)